IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1006 OF 2007

M/s.Kartarchand & Sons .. Petitioner.
Vs.
Union of India & Ors. .. Respondents.

WITH

WRIT PETITION NO.1024 OF 2007

M/s.Kartarchand & Sons .. Petitioner.
Vs.
Union of India & Ors. .. Respondents.

Mr.Anil Subramaniam for the petitioners.
Mr.S.D.Rayrikar for Mr.A.M.Joshi for the respondents.

CORAM : D.B.BHOSALE, J.
DATED : 11TH JULY, 2007.

P.C.:

. Heard learned counsel for the parties.

2. Rule, returnable forthwith. Mr.Rayrikar, learned counsel waives service for the respondents. By consent taken up for the final hearing.

3. The judgments and orders impugned in both the writ petitions and the circumstances against which they have been passed are similar and even the parties are same hence both the writ petitions are being disposed of by this common order.

4. The impugned judgments and orders, both dated 18.2.2006, have been rendered by the 9th Joint Civil Judge, Senior Division, Pune in Regular Civil Suit Nos.31 and 32 of 1998 setting aside the awards dated 29.9.1997 passed and published by the sole arbitrator

disallowing the claims submitted by the claimant made against the respondents. The petitioners are the heirs and legal representatives of the sole proprietor of the claimant firm who expired on 30.10.1993.

5. The suits were instituted for a decree in terms of the awards dated 29.9.1997 by which the arbitrator had disallowed the entire claim submitted by the claimant. The learned Judge, however, simply set aside both the awards dated 29.9.1997 and did not remit them as contemplated under section 16 of Arbitration Act, 1940 (for short "the said Act"). In view thereof the petitioners, in the present petition, have prayed for remitting the matter to the arbitrator for deciding the reference afresh on merits under section 16 of the Act. Mr.Subramaniam, learned counsel for the petitioners submitted that the sole arbitrator had violated the principles of natural justice and he ought to have had either allowed the petitioners to represent the deceased proprietor of the claimant or adjourned the matter until the probate was issued by the competent court so as to enable them to produce an authority to represent the deceased claimant.

6. It appears that the proprietor of the original claimant expired during pendency of the

arbitration proceedings before the arbitrator. Thereafter the petitioners, the heirs and legal representatives of the original-claimant, approached the arbitrator and requested him to allow them to plead on behalf of the original claimant. Their request was rejected by the arbitrator and he directed them to produce authority of the competent court and made it clear to them that if such authority was not produced he would proceed with hearing and decide the claim exparte. The petitioners, accordingly, approached the competent court for obtaining probate. It appears, the probate petition was pending when the exparte award was passed on 29.9.1997. The petitioners till then could not produce the authority. There is no dispute that the petitioners had instituted probate petition in 1995 itself in this court and the proceedings were pending. All these facts were brought to the notice of the arbitrator. However, the Arbitrator chose to proceed with hearing of the claim and decide it in absence of the heirs of the claimant. I am informed that the petitioners obtained probate on 22.12.2003. Keeping that in view and considering the overall facts and circumstances of the case, in my opinion, this was a fit case where the court below ought to have exercised the powers under section 16(1)(c) of the Act. Section 16(1)(c) confers power on the court to remit award or any matter referred to the

arbitration to the arbitrators or umpire for reconsideration upon such terms as it thinks fit where an objection to the legality of the award is apparent upon the face of it. In the present case, in my opinion, the Arbitrator, after having told the parties to produce authority to represent the deceased claimant and after having satisfied that the parties had taken steps for obtaining probate, either ought to have adjourned the matter till the petition for probate was disposed of or allowed the heirs to represent the claimants without probate. He did neither, which in my opinion is wrong and illegal and in view thereof the court below ought to have remitted the reference for its decision afresh after having set aside the awards. In the circumstances I pass the following order:

. The arbitrator shall decide the reference afresh after giving an opportunity of being heard to all concerned as expeditiously as possible and preferrably within a period of twelve weeks from the date of receipt of this order. It is needless to express that the arbitrator shall decide the reference uninfluenced by the earlier award dated 29.9.1997. In the result the Rule is made absolute in aforesaid terms. Both the writ petitions, accordingly, stand disposed of.

(D.B.BHOSALE, J.)